

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF**

**FROM: KRISTINE SASSER
DEPUTY ATTORNEY GENERAL**

DATE: FEBRUARY 14, 2014

**SUBJECT: IDAHO POWER'S APPLICATION FOR APPROVAL OF A SPECIAL
CONTRACT WITH J.R. SIMPLOT, CASE NO. IPC-E-13-23**

Idaho Power filed an Application with the Commission on December 4, 2013, requesting that the Commission issue an Order approving special contract terms for electric service between Idaho Power and J.R. Simplot Company. Simplot filed an answer on February 5, 2014, disputing Idaho Power's requested contract language.

THE APPLICATION

Idaho Power states that, in the spring of 2013, a Simplot representative contacted Idaho Power requesting that the Company enter into negotiations for a special contract for Simplot's Caldwell plant. In response, Idaho Power drafted a special contract and the parties entered into negotiations regarding the specific terms. Idaho Power maintains that the Company and Simplot have reached agreement "as to nearly all of the terms and conditions of the contract, but have reached an impasse on certain provisions regarding limitations on liability." Application at 1. Idaho Power requests that the Commission approve terms regarding the bilateral waiver of indirect, special and consequential damages. Application, Attachment 1, Section 11.2. The Company also asks the Commission to approve its proffered terms regarding limitations on direct damages. *Id.*, Section 11.3. Should the Commission determine that it is "prudent for the Company to assume the risk for unlimited direct damages and consequential damages associated with Simplot's business, Idaho Power requests an opportunity to re-examine the terms of the special contract, including, but not limited to, an appropriate cost-of-service, that appropriately reflect this assumption of risk." Application at 8.

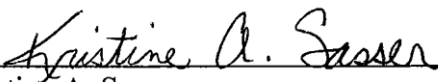
Simplot argues that Idaho Power's request for limited and waived liability is a violation of "the well-settled Idaho legal authority prohibiting the inclusion of such language in a utility's tariff." Answer at 2. Simplot maintains that Idaho Power's proffered clauses contradict the Idaho Supreme Court's rulings that exculpatory clauses used by a public utility are unenforceable. In addition, Simplot disputes Idaho Power's calculation of the rates included in the contract. Simplot states that "the cost of service study used to set Simplot's rate is vintage 2010 and is out dated [sic]."

STAFF RECOMMENDATION

Staff has reviewed Idaho Power's Application and Simplot's answer and recommends that this case be processed by Modified Procedure. Staff further recommends that the parties file comments no later than March 28, 2014, and replies no later than April 4, 2014.

COMMISSION DECISION

Does the Commission wish to issue a Notice of Application and Notice of Modified Procedure setting a comment deadline of March 28, 2014, and a reply deadline of April 4, 2014?



Kristine A. Sasser
Deputy Attorney General

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